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December 18, 2023

By ECF

The Honorable Philip M. Halpern
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

**Re: *Students for Fair Admissions v. United States Military Academy at West Point*,
No. 23 Civ. 8262 (PMH)**

Dear Judge Halpern:

SFFA writes in response to this Court's order and West Point's letter, both dated December 15.

This Court denied Mr. Wooten leave because his amicus brief "would do nothing to aid this Court's resolution of the issues in the action." Doc. 41 at 2. Construing his new *pro se* filing liberally, Wooten asks this Court to reconsider that denial. *See* Doc. 63. SFFA sees no reason to reconsider.

West Point notes that, in SFFA's related case against the Naval Academy, the district court denied a preliminary injunction. *See* Doc. 65. Though that court has not yet issued its opinion, it explained at the hearing that it denied a preliminary injunction because the case needed more factual development. That reasoning does not apply here: West Point has revealed more details about its admissions process and, unlike the Naval Academy, has disclosed internal admissions policies. *Compare, e.g.*, Docs. 53-1, 53-2 (attaching West Point's admissions documents), *with, e.g.*, Doc. 46-2 ¶12 n.3, *SFFA v. U.S. Naval Academy*, No. 23-cv-2699 (D. Md. Dec. 1, 2023) (refusing to disclose "nonpublic internal directives ... about USNA's admissions process"). Notably, the district court also rejected many of the arguments that West Point makes here. Specifically, the court explained why SFFA had standing,¹ why SFFA did not delay,² and why all preliminary-injunction factors would favor SFFA if it proved a likely violation of the Fifth Amendment.³

¹ *See* Tr.29 (Court: "I'll just tell you early in the game on this, Mr. Gardner, I am definitely not inclined to go down that path because I think that just sets the bar way, way too high. ... I just don't think that's an accurate summary of standing law.").

² *See* Tr.39 (Court: "So I'm not sure you can go with the matter of delay when it comes to this. You've actually moved pretty quickly, it seems to me. Chief Justice Roberts' opinion was June 29th and they filed a lawsuit here in this court October the 6th, and that includes summer-time, so that's a pretty quick turn around, it seems to me.").

³ *See* Tr.44-45 (Court: "[O]n irreparable harm it really is very much dependent upon whether or not there is a likelihood of success on the merits with respect to the constitutional claim. ... And I think that the same analysis applies with respect to the balance of the equities here, ... it depends upon whether or not there's a constitutional violation").

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SFFA appreciates, though, that the court ruled on the preliminary injunction at the hearing itself, instead of waiting until its opinion was finished. Because time is short and further appeals are likely here too, SFFA respectfully asks this Court to do the same.

Respectfully submitted,

/s/ Thomas R. McCarthy

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